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271159Z Apr 01

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ACTION AF-00

INFO	LOG-00	NP-00	AID-00	AMAD-00	ACQ-00	CIAE-00	DINT-00
	DODE-00	SRPP-00	DS-00	EB-00	EUR-00	OIGO-00	FBIE-00
	VC-00	H-01	TEDE-00	INR-00	IO-00	LAB-01	L-00
	VCE-00	AC-01	NSAE-00	OIC-02	OMB-01	OPIC-01	PA-00
	PM-00	PRS-00	ACE-00	P-00	SP-00	IRM-00	SSO-00
	STR-00	TRSE-00	USIE-00	R-00	PMB-00	DSCC-00	PRM-01
	DRL-02	G-00	NFAT-00	SAS-00	/010W		
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FM AMEMBASSY HARARE  
TO SECSTATE WASHDC IMMEDIATE 8736  
INFO NSC WASHDC IMMEDIATE  
SOUTHERN AFRICAN DEVELOPMENT COMMUNITY  
AMEMBASSY NAIROBI

C O N F I D E N T I A L HARARE 001453

SIPDIS

NSC FOR SENIOR AFRICA DIRECTOR JENDAYI FRAZER  
LONDON FOR GURNEY  
PARIS FOR BISA WILLIAMS  
NAIROBI FOR PFLAUMER

E.O. 12958: DECL. 04/25/11  
TAGS: [PHUM](#) [PGOV](#) [KDEM](#) [PINS](#) [ZI](#)  
SUBJECT: MDC WINS TWO PARLIAMENTARY LEGAL CHALLENGES

REF: HARARE 1123

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CLASSIFIED BY CHARGE D'AFFAIRES EARL IRVING. REASONS: 1.5  
(B) AND (D).

JUDICIAL RULING

1. (C) IN A SIGNIFICANT LEGAL VICTORY FOR THE OPPOSITION MOVEMENT FOR DEMOCRATIC CHANGE (MDC), HIGH COURT JUDGE JAMES DEVITTIE ON APRIL 26 NULLIFIED ZANU-PF'S PARLIAMENTARY VICTORIES IN TWO CONSTITUENCIES LAST JUNE -- BUHERA NORTH IN MANICALAND AND HURUNGWE EAST IN MASHONALAND WEST -- AND DECLARED THE TWO SEATS VACANT. THE PETITIONER IN THE BUHERA NORTH CASE IS MDC PRESIDENT MORGAN TSVANGIRAI, WHO HAD LOST TO THE ZANU-PF CANDIDATE -- KENNETH

SIPDIS  
MANYONDA -- BY 2500 VOTES (OUT OF A TOTAL OF MORE THAN 23,000 BALLOTS CAST). IN HIS ORAL REMARKS, DEVITTIE CITED WIDESPREAD VIOLENCE AND INTIMIDATION IN THE TWO VOTING DISTRICTS, NOTING THAT THE CLIMATE MAY HAVE PREVENTED CITIZENS FROM "EXERCISING THEIR DEMOCRATIC RIGHT TO VOTE." REFLECTING THE INTENSE PRESSURE CONFRONTING HIM AND HIS TWO HIGH COURT COLLEAGUES WHO ARE HANDLING THE MDC'S LEGAL CHALLENGES, DEVITTIE SAID HIS DECISIONS CAUSED HIM "MORE ANXIETY THAN HE HAS HAD CAUSE TO FEEL IN THE TIME HE HAS SAT ON THE BENCH."

REACTIONS

2. (C) TSVANGIRAI WELCOMED THE JUDGMENT, SAYING IT HAD CONFIRMED THAT LAST JUNE'S ELECTIONS HAD NOT BEEN FREE AND FAIR, AND HE PRAISED THE JUDICIARY FOR NOT SUCCUMBING TO STATE INTIMIDATION. IN A SURPRISINGLY UPBEAT REACTION, THE USUALLY VITRIOLIC MINISTER OF  
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INFORMATION JONATHAN MOYO EMPHASIZED THE GOVERNMENT'S COMMITMENT TO THE RULE OF LAW AND RESPECT FOR COURT DECISIONS. AN ALMOST GIDDY MOYO SAID ZANU-PF SUPPORTERS WERE "RARING" TO CONTEST A BY-ELECTION AND SAID HE HOPED THE REGISTRAR-GENERAL WOULD ORGANIZE THE PROCESS WITHOUT DELAY.

NEXT STEPS

3. (C) ACCORDING TO THE ELECTORAL ACT, BY-ELECTIONS MUST BE HELD TO FILL THE NOW VACANT SEATS WITHIN APPROXIMATELY 90 DAYS FROM THE DATE DEVITTIE'S WRITTEN JUDGMENT IS RELEASED -- EXPECTED WITHIN A WEEK -- OR OF A SUPREME COURT RULING UPHOLDING HIS DECISION. GANDI MUDZINGWA, TSVANGIRAI'S PERSONAL ASSISTANT, TOLD POLITICAL SECTION CHIEF ON APRIL 27 THAT THE MDC PRESIDENT WAS TORN ABOUT WHETHER TO CONTEST THE BY-ELECTION. ON ONE HAND, HE WANTS TO DEMONSTRATE TO THE VOTERS IN BUHERA NORTH THAT HE IS NOT AFRAID TO RUN AGAIN BUT, ON THE OTHER, CONTESTING A PARLIAMENTARY SEAT WHILE HE IS RUNNING

FOR PRESIDENT MIGHT NOT MAKE THE BEST SENSE. MUDZINGWA SAID THE MDC'S NATIONAL EXECUTIVE COMMITTEE WOULD MEET SOON TO CONSIDER THIS ISSUE. DEVITTIE IS SCHEDULED TO RENDER DECISIONS IN TWO OTHER CASES THE AFTERNOON OF APRIL 27.

MORE INTIMIDATION

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14. (C) TWO HOURS AFTER DEVITTIE ANNOUNCED HIS RULINGS ON APRIL 26, A GROUP OF FIFTEEN CENTRAL INTELLIGENCE ORGANIZATION AGENTS AND POLICE IN RIOT GEAR APPEARED AT THE MDC'S HEADQUARTERS IN DOWNTOWN HARARE. THEY ARRESTED FOUR OF TSVANGIRAI'S BODYGUARDS, ACCUSING THEM OF HAVING RECEIVED MILITARY TRAINING IN UGANDA. ACCORDING TO  
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MUDZINGWA, THE FOUR WERE DETAINED OVERNIGHT AT HARARE'S CENTRAL POLICE STATION AND DENIED ACCESS TO THEIR ATTORNEY. AS OF MIDDAY ON APRIL 27, FORMAL CHARGES STILL HAD NOT BEEN FILED AGAINST THE FOUR, WHO REMAINED IN DETENTION AND CONTINUED TO BE DENIED ACCESS TO LEGAL COUNSEL.

COMMENT

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15. (C) DEVITTIE SHOWED A GREAT DEAL OF COURAGE, AS HE WAS UNDER SIGNIFICANT PRESSURE TO RULE THE OTHER WAY. INDEED, HIS DECISIONS TOOK EVERYONE IN THE COURTROOM BY SURPRISE, AND WILL UNDOUBTEDLY GIVE HOPE TO ZIMBABWEANS, MANY OF WHOM HAVE BEEN FEELING INCREASINGLY DESPONDENT ABOUT THE DIRECTION OF THEIR COUNTRY. MOYO'S POSITIVE REACTION PROVIDES REASON TO BE SUSPICIOUS, AND SUGGESTS THAT ZANU-PF HAS SOME OTHER PLAN UP ITS SLEEVE THAT PROBABLY WILL INVOLVE SIGNIFICANT LEVELS OF VIOLENCE AND INTIMIDATION. THE GOVERNMENT CERTAINLY REVEALED ITS TRUE COLORS IN RAIDING THE MDC'S OFFICES SO SOON AFTER DEVITTIE'S JUDGMENTS. ALTHOUGH THE ELECTORAL ACT PROVIDES GENERAL TIMELINES WITHIN WHICH A BY-ELECTION SHOULD BE HELD, IT PROVIDES THE PRESIDENT WITH SOME DISCRETION FOR DELAY, AND WE FULLY EXPECT MUGABE TO TAKE ADVANTAGE OF THIS WIGGLE ROOM.

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